

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2518 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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JAYESH R MOR,

Versus

STATE OF GUJARAT

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Appearance:

MR NAVIN K PAHWA for Petitioner  
MS PJ DAVAWALA for Respondent No. 2  
MR SP DAVE, APP for Respondent No. 1

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 12/07/1999

CAV JUDGEMENT

1. Heard Mr. Pahva for the petitioner, Mr. S.P.  
Dave, learned Additional Public Prosecutor for respondent  
No.1-State and Ms. Davawala for respondent No.2.

2. Rule. Mr. S.P. Dave waives service of Rule on

behalf of respondent No.1 and Ms. Davawala waives service on behalf of respondent No.2.

3. The petitioner happened to be a Director of one Aashi Leasing and Finance Limited, a Public Limited company registered under the Companies Act. The said company failed to file annual return of the company by 30th November, 1996, as required under Section 159 of the Companies Act and, therefore, the Registrar of Companies for Gujarat, Dadra and Nagarhaveli lodged complaint against the company and three directors of which present petitioner was shown as accused No.3, under Section 162 of the Companies Act.

4. The petitioner has challenged the said complaint on the ground that it is not maintainable against him. According to the petitioner, at one stage, he was director of the company, but he resigned from the directorship by his letter dated 23rd September, 1996 with effect from 23rd September, 1996. The said resignation came to be accepted by the Board of Directors and, accordingly, the company had submitted form No.32 indicating that the petitioner ceased to be director with effect from 17.10.1996, and, therefore, on the date of the alleged commission of the offence, the petitioner was not director and he cannot be held responsible therefor. The petitioner has in support of his version, produced a copy of the resignation at Annexure-B and that of form No.32 at Annexure-C.

5. Mr. Pahva, learned advocate appearing for the petitioner, submitted that the offence is under Section 159 of the Companies Act and, if that Section is considered, it holds responsible the company and every officer of the company who is in default, liable to be punished. Mr. Pahva submitted that the petitioner was neither director nor officer of the company on 30th November, 1996 and, therefore, he cannot be held responsible for non-filing of the statement of accounts, balance sheet, etc. He has further drawn attention of this Court to Section 5 of the Companies Act which defines "officer who is in default". Mr. Pahva submitted that the petitioner does not fall under any of the categories stated in the said definition. Under the circumstances, criminal liability cannot be fastened on the petitioner and the complaint lodged against him may be quashed.

6. Ms. Davawala appearing for the Registrar of Companies-respondent No.2 submitted that the company's head quarters is at Ahmedabad. Out of the three accused

persons, accused No.2 and 4 stay at Mumbai and it is only the petitioner who is staying at Ahmedabad. He is a Chartered Accountant and, therefore, an inference can be drawn that he must be looking after the affairs of the company at Ahmedabad level, more so in relation to accounts matters and, therefore, he cannot escape from this liability. She has further submitted that, if Annexure-C is perused, it indicates that, although the resignation was accepted and the change was effected from 17th October, 1996, form No.32 came to be submitted only on 21st July, 1997 and, therefore, on 30th November, 1996, petitioner could not have escaped from the liability.

7. Mr. S.P. Dave, learned Additional Public Prosecutor submitted that there is no substance in the petition and may be dismissed.

8. In reply to the argument advanced by Ms. Davawala that form No.32 was sent on 21st July, 1997, Mr. Pahva has drawn attention to Section 303 of the Companies Act, which casts duty on the company to intimate the change within 30 days of the effect of the change. Sub-section (3) of the said section provides that in the event of default in complying with the above provision, the company and every officer of the company who is in default shall be punishable with a fine which may extend to fifty rupees for every day during which the default continues. Mr. Pahva, therefore, submitted that the resignation was accepted on 17.10.1996 and, therefore, it was the duty of the company to send form No.32 within one month thereof and, if there is any default on the part of the company, the petitioner cannot be held responsible even according to provisions of sub-section(3) of Section 303 of the Companies Act.

9. Having regard to the contentions raised, the following dates become important :-

- 1) 23rd September 1996 - Petitioner tendered resignation as a professional director from the company with effect from 23rd September, 1996.
- 2) 17th October, 1996 - Resignation was accepted and the change was effected.
- 3) 30th November, 1996 - The last date for filing of copies of Annual Return, etc.
- 4) 21st July, 1997 - The company sent form No.32 to intimate the change following resignation of the

petitioner.

It is apparent from the above data that the petitioner ceased to be director of the company on 17.10.1996. Admittedly, according to the complaint, the annual return was to be submitted latest by 30th November, 1996. On that day, the petitioner was not connected with the company in any manner. To put it differently, the petitioner's relationship with the company has snapped on 17.10.1996 and on 30.11.1996 the date on which the cause of action can be said to have arisen for the alleged commission of the offence/default, he had no relation whatsoever with the company.

10. Section 162 of the Companies Act runs as under :-

"162. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(2) For the purposes of this section and sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act."

A bare perusal of the above section, particularly sub-section (1) indicates that, in event of default in complying with provisions of section 159, 160 or 161, the company and every officer of the company who is in default would be liable to be punished. Since the default can be said to have been committed in the instant case only on 30th November, 1996, he cannot be saddled with any liability. On that day the petitioner had no relationship with the company. He would not fall within the definition of officer who is in default as defined under section 5 of the Companies Act and, therefore, the complaint against the petitioner is not maintainable at all.

11. Considering the argument advanced by Ms. Davawala that the intimation of change was sent on 21st July, 1997 (Annexure-C) and, therefore, the petitioner cannot escape the liability, although it sounds very attractive, prima facie, it does not merit acceptance.

The reason is that the relationship between the petitioner and the company came to an end on 17.10.1996 latest. Section 303 of the Companies Act expects the company to send such a change within a period of 30 days. In case of default, sub-section (3) provides that the company and every officer of the company who is in default shall be liable to be punished. The section, therefore, does not cast any responsibility on the petitioner as an out going director to intimate the Registrar of Companies about the change. It is the company who is responsible to intimate the change and in case of default, it is the company and every officer of the company who is in default is supposed to be held liable for being punished with a fine and the argument advanced by , therefore, cannot be accepted.

12. The outcome of the above discussion is that, on the date on which the offence/default is said to have been committed, i.e. on 30th November, 1996, of not submitting copies of the annual return, the petitioner's relationship with the company was not in existence. The petitioner cannot be held responsible even otherwise as he does not fall within the definition of officer in default as given in Section 5 of the Companies Act and sub-section (1) of Section 162 of the Companies Act holds the company and every officer in default responsible for such lapse and, therefore, the petition deserves to be allowed. No offence against the petitioner can be said to be constituted and as a necessary consequence the petition must succeed and complaint qua the petitioner must be quashed.

13. The petition is, therefore, allowed. The complaint being Criminal Case No.321 of 1998, lodged before the learned Additional Chief Metropolitan Magistrate, Ahmedabad, is hereby quashed so far as it relates to the petitioner only. It is clarified that the entire complaint is not quashed. This Court expresses no opinion on merits of the complaint and that it may be taken to its logical conclusion in accordance with law. Rule is made absolute accordingly.

[ A.L. DAVE, J. ]

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